Bond Case Briefs

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Missouri Brings New Case Against Moberly Bond Underwriter.

CHICAGO — The Missouri Secretary of State filed a civil enforcement action against Morgan Keegan & Co. Inc. accusing the firm of securities fraud in its role as underwriter of $39 million of defaulted bonds issued by a Missouri city.

The action is the latest attack on Morgan Keegan's performance as underwriter of the bonds issued with an appropriation backing from the city of Moberly to finance a sucralose artificial sweetener plant by Mamtek US Inc., a subsidiary of a Chinese firm. The company abandoned the half-built plant several years ago and the city defaulted on the bonds.

Andrew Hartnett, securities commissioner in Secretary of State Jason Kander's office, seeks in the filing full restitution for Missouri bondholders and a $15 million civil penalty from the firm. It also asks that civil penalties be imposed on 10 individually named defendants who are charged with various counts of state securities violations tied to their work on the bond sale.

The complaint, filed last week, alleges that the defendants failed in their fiduciary duty to "satisfy basic due diligence standards" on the project, its developers and their companies and claims "which would have revealed to Moberly and Missouri investors that Mamtek's promises were false."

The civil enforcement action marks an escalation of Kander's effort to penalize Morgan Keegan. In April, the office issued a cease-and-desist order in a less punitive administrative action seeking full restitution. The new action seeks much stiffer civil penalties and fines, adds new defendants, and provides more documents and communications on Morgan Keegan's marketing of the bonds.

Morgan Keegan has denied any wrongdoing or responsibility for investor losses, citing the city's backing on the bonds. The firm filed a complaint in the state courts seeking to dismiss Kander's administrative action, arguing there's no factual evidence to warrant it and challenging the commissioner's authority to impose any civil fines or order restitution under state securities laws.

The new case is a civil enforcement action. It was filed on Nov. 21 in Boone County Circuit Court where the largest single state bondholder is located. In addition to the company, the complaint targets William Kevin Thompson, Richard Temple Murray, Kevin Lee Edwards, Robert Baird, Elizabeth Gail Tyler, Chloe Baker Plunk, Chip Peebles, Kevin Giddis, Casey O'Brien, and Kevin Potter. Morgan Keegan became a subsidiary of Raymond James Financial Inc. in April 2012.

Giddis is president of fixed income capital markets at the firm and the others were bankers, traders, underwriters, or sales professionals. It appears from the filing that all are being represented by Morgan Keegan's attorneys at Stinson Morrison Hecker LLP.

The complaint accuses the defendants of defrauding their clients by misrepresenting the facts about the offerings, including falsely stating that Moberly had promised to pay for the bonds; and omitting material facts, including that the defendants had not thoroughly investigated Mamtek, the only entity who investors could expect to pay for the bonds.

“Some of the defendants’ acts, practices, and courses of business included providing false information to those defendants who were selling the bonds to Missouri investors which in turn operated as a fraud on those investors,” the filing alleges.

In a statement the firm again firmly denied responsibility for the losses suffered by Missouri taxpayers. It noted the project’s review by local and state officials months before it was hired, the city’s backing, and ratings that supported the bonds.

“The city of Moberly failed to honor its moral obligation to appropriate funds, and passed a resolution changing the credit structure of the documents after default by Mamtek, over a year after the bonds were issued,” the statement read. The firm also noted that criminal charges are pending against Mamtek’s former president.

The new action seeks $6.7 million in restitution for Missouri-based investors, and asks that Morgan Keegan pay $15 million in civil penalties and cover the division’s investigation and prosecution costs. Additional penalties are being sought of between $100,000 and $800,000 from the other named defendants.

The commissioner also asks that Morgan Keegan be blocked from underwriting any further bond issues — beyond those they currently have been hired to manage — until the firm hires an independent consultant to review its due diligence policies and compliance. The consultant would also be charged with making recommendations to ensure the firm meets industry best practices.

The civil enforcement filing marks the latest development in a tale that has drawn the attention of state lawmakers and local, state, and federal regulators, and resulted in a series of bondholder lawsuits that have raised questions over how the project won borrowing assistance and state financial incentives.

The Moberly Industrial Development Authority sold bonds backed by a city appropriation pledge to help finance the sucralose plant in 2010. The firm in August 2011 defaulted on a payment to Moberly needed for debt service and the city informed trustee UMB Bank that it wouldn’t honor its pledge to repay the debt. Mamtek then abandoned the factory.

The bonds had carried an A rating from Standard & Poor’s based upon the city’s pledge. Moberly lost its investment-grade rating from Standard & Poor’s after it declined to make good on its pledge. The sucralose plant bonds are rated D. The trustee auctioned off the assets for about $2 million last year.

Local and state prosecutors and federal regulators have filed a mix of civil and criminal complaints alleging theft, fraud and securities violations against Mamtek’s former head, Bruce Cole, who had told city and state officials the company had operational facilities in China, which it did not.

The trustee and other creditors forced the company into involuntary bankruptcy. Various bondholder lawsuits are also pending against Morgan Keegan. State lawmakers held hearings on the project last year as it had been in line to receive $17.6 million in state subsidies.

In another recent development involving a lawsuit led by a large bondholder, Columbia, Mo.-based Shelter Life Insurance Co., the city settled with bondholders for $95,000. Shelter filed a lawsuit in Cole County Circuit Court accusing Morgan Keegan of securities fraud. It did not name the city but Morgan Keegan moved to bring the city into the lawsuit. The judge then dismissed the city from the case, but the firm filed what’s known as a writ of prohibition with the Missouri Supreme Court challenging the lower court’s decision.

Moberly decided the best course of action was to settle with bondholders given the lengthy challenge that could have ensued as Morgan Keegan sought to bring the city back into the litigation. The bondholder lawsuit had been set for a December trial date but it was put on hold pending the outcome of Morgan Keegan's challenge.

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